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LEE MAX BARNETT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE MAX BARNETT,

Petitioner,

v.

ROBERT WONG, ACTING WARDEN,
San Quentin State Prison

Respondent.

NO. CIV-S-99-2416 JAM CMK

PETITIONER'S MOTION TO FILE NON-
PARTY'S MEDICAL RECORDS UNDER SEAL
and ORDER

DEATH PENALTY CASE

Hearing Date: Thursday, August 6, 2009

Hearing Time: 11:00 a.m.

Location: Redding (Telephonic Appearances)

Jennifer M. Corey and Robert D. Bacon, counsel for Petitioner LEE MAX BARNETT, pursuant to Local Rules 39-140(a)(vi) and 39-141(a), respectfully request leave to file under seal medical records of non-party Charles Andres. Contemporaneously with this motion, Mr. Barnett is filing a motion to take the deposition of Mr. Andres to perpetuate his testimony because of his terminal illness. In support of his motion to file under seal, Mr. Barnett states:

Motion to File Non-Party's Medical Records
Under Seal; Proposed Order

Barnett v. Wong, CIV S-99-2416 JAM CMK

1 Congress has guaranteed the privacy of medical records. *See* Regulations implementing the Health
 2 Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, 45 C.F.R. Parts 160 and 164
 3 (effective April 14, 2003). The Ninth Circuit has held that “[i]ndividuals have a constitutionally protected
 4 interest in avoiding 'disclosure of personal matters,' including medical information.” *Tucson Women's*
 5 *Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004). California likewise has recognized that medical
 6 information is personal and confidential. *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 41 (1994).
 7 The right to privacy in one's medical records is protected by Article I, section 1, of the California
 8 Constitution. *John B. v. Superior Court*, 38 Cal. 4th 1177, 1198 (2006). *See also* Eastern District Local
 9 Rule 39-140(a)(vi) (information required to be kept confidential pursuant to federal law must be redacted).

10 Mr. Barnett must submit Mr. Andres's medical records to substantiate his claim that Mr. Andres is
 11 terminally ill, therefore Mr. Barnett should be permitted to take his deposition to perpetuate his testimony.
 12 However, there is no reason for Mr. Andres's personal, confidential medical information to be made
 13 public simply so that Mr. Barnett can vindicate his rights to due process and a fair habeas corpus
 14 proceeding.

15 Petitioner provided Mr. Andres's medical records to Respondent's counsel on July 13, and will
 16 provide them again with this motion. Petitioner seeks to protect Mr. Andres's records from public view,
 17 but not from Respondent's view.

18 WHEREFORE, Mr. Barnett respectfully requests that this Court accept for filing under seal Mr.
 19 Andres's medical records, submitted in support of Mr. Barnett's motion for leave to take deposition of
 20 Charles Andres.

21 Dated: July 21, 2009

Respectfully submitted,

22 ROBERT D. BACON

23 DANIEL J. BRODERICK
 24 Federal Defender

25 /s/ Jennifer M. Corey
 26 JENNIFER M. COREY
 27 Assistant Federal Defender

28 Attorneys for Petitioner
 LEE MAX BARNETT

Motion to File Non-Party's Medical Records
 Under Seal; Proposed Order

ORDER

Good cause appearing, Petitioner's Motion to File Non-Party's Medical Records Under Seal is GRANTED. Charles Andres's medical records, submitted in support of Petitioner's Motion for Leave to Take Deposition of Charles Andres, shall be [lodged] under seal.

DATED: July 27, 2009


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE